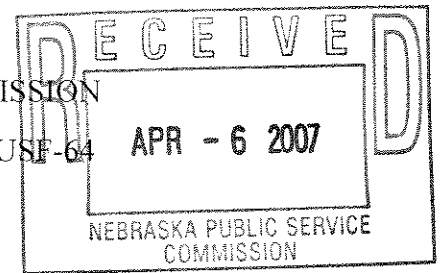


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service
Commission, on its own motion, seeking to
investigate the use of expense caps in the
earnings calculation for Nebraska universal
service fund support.

) Application No. NUSF-64
)
)
)
)



COMMENTS OF THE RURAL COMPANIES

The Rural Independent Companies and the Rural Telecommunications Coalition of Nebraska (collectively, the "Rural Companies") hereby submit their comments in response to the Nebraska Public Service Commission's (the "Commission") Order Seeking Comment (the "Order") entered in this proceeding on March 6, 2007. The Rural Companies appreciate the opportunity to provide their comments regarding the possible use of expense caps in the earnings calculation for Nebraska Universal Service Fund ("NUSF") support.

Introduction

On January 31, 2007, the Commission held a workshop in accordance with the directive contained in the Order Opening Docket. The Rural Companies, through their legal counsel and telecommunications consultants, participated in the workshop. The Rural Companies presented a series of ten questions that were recommended for submission to interested parties for comment in a Commission-issued progression order. A copy of the document presented at the workshop by the Rural Companies is attached to these Comments as Exhibit A (hereinafter referred to as the "Workshop Memorandum").

The rationale for recommending that the questions contained in the Workshop Memorandum be released for public comment was as follows:

This procedure would (a) afford interested parties an appropriate process to provide input to the Staff in a manner that will begin to establish a full and complete record for the Commission's consideration in this docket; (b) serve the Commission's and the Staff's requests for "feedback from interested persons" (Order Opening Docket at p. 1 and Ms. Knutson's January 26 email at next to last

paragraph) on the subject matter of this docket; and (c) be consistent with the Commission's approach followed in NUSF-26 to afford interested parties a process to create a comprehensive record regarding a subject of significant importance to the future administration of the NUSF.

As the Commission notes in the Order, a modified sub-set of the questions set out in the Workshop Memorandum is presented in the Order. Questions 1 through 5 in the Order essentially correspond to questions 4, 6, 7, 9 and 10 in the Workshop Memorandum.

In presenting these questions for comment in the Order, the Commission also stated:

Interested parties are free to comment on the overall propriety of using expense caps in the NUSF earnings calculation and file comments on other issues germane to this docket.

The Rural Companies continue to believe that it is very important for the Commission to focus on the policy implications of questions number 1 and 5 set forth in the Workshop Memorandum.

These questions read as follows:

1. What policy or policies should the Commission seek to promote through the potential implementation of expense caps in this docket? (The Order Opening Docket does not identify such polic[ies].)
5. If incenting investment in plant needed to support advanced services is a desired policy, how do expense caps support such an incentive?

The Rural Companies believe that the Commission should carefully consider these policy-oriented questions prior to proceeding with consideration of the implementation-oriented questions presented in the Order. Therefore, in response to the Commission's invitation to file comments "on other issues germane to this docket," the Rural Companies will first comment on the policies implicated by the above-quoted questions 1 and 5 from the Workshop Memorandum, and will then proceed with brief comments in response to the questions actually posed in the Order.

Policy Considerations

What policy or policies should the Commission seek to promote through the potential implementation of expense caps in this docket?

The purpose of the Nebraska Telecommunications Universal Service Fund Act (“NTUSFA”) is to “ensure that all Nebraskans, without regard to their location, have comparable accessibility to telecommunications services at affordable prices.” *Neb. Rev. Stat.* § 86-317 (2006 Sup.) The policies expressly declared by the Legislature to serve the foregoing purpose of the NTUSFA are enumerated in *Neb. Rev. Stat.* § 86-323 (2006 Sup.). To provide further guidance concerning the requirements associated with administration of the NUSF, the Legislature directed that:

The fund shall provide the assistance necessary to make universal access to telecommunications services available to all persons in the state consistent with the policies set forth in the Nebraska Telecommunications Universal Service Fund Act.

Neb. Rev. Stat. § 86-324(1) (2006 Sup.)

At the most basic level, the Rural Companies believe that the key question is: What Commission actions are necessary to effect the purpose of the NTUSFA, as quoted above, in a manner that is consistent with the associated policies enumerated by the Legislature? The Rural Companies submit that the answer to this question is that the Commission should seek to create and maintain an environment that *promotes investment in the telecommunications infrastructure* needed to provide residents of this State, and especially those residing in high-cost areas, with access to telecommunications services, including advanced telecommunications and information services, at affordable rates. In such an environment, adjustments or additions to the regulatory requirements associated with the operation of the NUSF would be minimized in order to create the stability and predictability required to support decisions by carriers to make long-term

investments in the infrastructure needed to provide access to advanced telecommunications and information services.

Several of the Commission's recent dockets involve, at least in part, a focus on this theme of administering the NUSF in a manner that promotes investment in the infrastructure needed to provide access to basic, as well as advanced, services. Notably, such dockets include NUSF-65 in which broadband deployment standards are under study. Further, a fundamental underpinning of the establishment of the permanent NUSF in Application NUSF-26 was the establishment of a Support Allocation Methodology or SAM that promotes investment of NUSF support in the high cost areas of the State.

The foregoing considerations then lead to the question as to whether establishment of expense caps serve the policy goal of investment in telecommunications infrastructure in high cost areas of Nebraska. The Rural Companies believe that the Commission should address this question to all interested parties for comment. A subsidiary question that should also be addressed is whether the introduction of expense caps serves to strengthen, or to weaken, the predictability that is statutorily required of the NUSF support mechanism and that is critical to encourage investment in telecommunications infrastructure.

If incenting investment in plant needed to support advanced telecommunications and information services is a desired policy outcome, how do expense caps support such an incentive?

In the Rural Companies' view, there may be a relationship between capping operating expenses and encouraging increased depreciation expenses which are a direct consequence of plant investment. Nevertheless, the placement of limitations on operating expenses can have other, likely unintended, consequences. The Commission should explore, in this docket, what those other consequences may be, in order to avoid any action that could damage the ability of

Nebraska eligible telecommunications carriers (“NETCs”) to provide quality service to consumers. For example, a cap on plant specific operations expense could eventually cause NETCs to reduce the number of maintenance personnel, resulting in a reduced level of service quality to consumers and an increased level of service complaints to the Commission. A cap on customer operations expense could have similar unintended consequences.

If the Commission’s rationale in proposing expense caps is that such caps will encourage investment, in order to validate this supposition the Commission should invite input from all interested parties to provide comments or evidence at a public hearing to address whether expense caps actually provide an investment incentive without inadvertently damaging NETCs’ ability to provide quality service and to fulfill the other policy requirements of the NTUSFA. The Commission should also address whether an expense cap mechanism can be devised that could be equitably applied to all NETCs, and that would not, for example, pose a greater risk to small companies than to large companies.

The Rural Companies are not opposed to NUSF mechanisms that require NETCs to be accountable for the proper use of the NUSF support received. However, it is imperative that the Commission carefully consider all of the ramifications of any new NUSF restrictions or regulations it chooses to introduce, and that the Commission seeks and obtains input from interested parties in the course of such consideration.

Responses to Questions Presented in the Order

1. How will or should implementation of expense caps be administered through the NUSF-EARN Form process?

The Commission should forego further consideration of this question until such time that a determination is reached as to the policy or policies at issue in this matter and whether the

implementation of expense caps serves such policies. The Rural Companies reiterate their previous comments that an appropriate process should be implemented to afford all interested parties an opportunity to provide input concerning such policy or policies so that a complete record can be established for Commission consideration.

2. In the event that an expense cap proposal were to be implemented, should such proposal be restricted only to prospective application, and should a transition period be implemented?

The Rural Companies believe that any expense cap mechanism must be limited to prospective application. To do otherwise would constitute a violation of the requirement of *Neb. Rev. Stat. § 86-323(5)* (2006 Sup.) that the NUSF support mechanism must be “predictable.” Whether a transition period should be implemented necessarily depends upon the prior determination as to whether expense caps are implemented, which, in turn, requires completion of a process that establishes a complete record for Commission consideration.

3. Should expense cap calculations be subject to adjustments or waiver based upon company-specific expense characteristics such as low population density, high service costs or unusually costly projects undertaken to improve service? What should be the process for making these adjustments?

The Rural Companies believe that a waiver process is generally good policy because of the inherent difficulty of designing a regulatory framework that addresses every possible situation. However, if a waiver process were adopted, such process should be administered pursuant to an established set of guidelines such that all NETCs may clearly understand the criteria that would govern a grant of waiver, thus minimizing to the extent possible, any *ad hoc* waiver grants or denials.

4. The Commission proposes including expense categories 6110, 6120, 6220, 6230, 6310, 6410, 6510, 6540, 6610, 6620, 6710 and 6720. Interested parties should comment on whether the foregoing list of expense categories is appropriate to use. If not, interested parties should elaborate on the reasons for exclusion of certain expense categories.

The Commission should postpone consideration of this question until such time that a determination is reached as to the policies at issue in this matter and whether the implementation of expense caps serves such policies. The Rural Companies reiterate their previous comments that an appropriate process should be implemented to afford all interested parties an opportunity to provide input concerning such policies so that a complete record can be established for Commission consideration.

5. Should the proposal to establish expense caps contain different terms and conditions applicable to rural and non-rural NETCs?

The Commission should postpone consideration of this question until such time that a determination is reached as to the policies at issue in this matter and whether the implementation of expense caps serves such policies. The Rural Companies reiterate their previous comments that an appropriate process should be implemented to afford all interested parties an opportunity to provide input concerning such policies so that a complete record can be established for Commission consideration.

Conclusion

The Rural Companies have supported and continue to support the principle of accountability regarding the use of support provided by the NUSF. Further, the Rural Companies support the proposition that investment in the telecommunications infrastructure that is necessary to provide access to telecommunications services, including advanced telecommunications and information services, in all regions of the State serves the purpose and policy principles of the NTUSFA, but that certain other functions of NETCs, such as adequate customer service and maintenance activities, also serve the ends the NTUSFA seeks to achieve.

The Rural Companies urge the Commission to provide a process and procedures to create a record that provides the context for determination of the policy or policies that may be served by creation of expense caps and to determine whether expense caps would rationally serve the purpose and policies established by the Legislature that govern the implementation of the NUSF.

Dated: April 6, 2007.

Respectfully submitted,

Arlington Telephone Company,
Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco Inc.,
Consolidated Telecom, Inc.,
Consolidated Telephone Company,
Curtis Telephone Company,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Co., Inc.,
K&M Telephone Company, Inc.,
Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telecom Inc., and
Three River Telco
(the "Rural Independent Companies")

By:



Paul M. Schudel, No. 13723
James A. Overcash, No. 18627
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500
(402) 437-8558 Facsimile
Their Attorneys

Arapahoe Telephone Company d/b/a
ATC Communications,
Benkelman Telephone Company, Inc.,
Cozad Telephone Company,
Diller Telephone Company,
Glenwood Telephone Membership
Corporation,
Hartman Telephone Exchanges, Inc.,
Hemingford Cooperative Telephone Co.,
Keystone-Arthur Telephone Company,
Mainstay Communications,
Plainview Telephone Company,
Southeast Nebraska Telephone Co.,
Wauneta Telephone Company, and
Westel Systems f/k/a Hooper Telephone
Company
(the "Rural Telecommunications
Coalition of Nebraska")

By:



Troy S. Kirk No. 22589
REMBOLT LUDTKE LLP
1201 Lincoln Mall, Suite 102
Lincoln, NE 68508
(402) 475-5100
(402) 475-5087 Facsimile
Their Attorneys

CERTIFICATE OF SERVICE

The original and five copies of the foregoing Comments of the Rural Companies were hand delivered on April 6, 2007, to the Nebraska Public Service Commission, 1200 N Street, Suite 300, Lincoln, Nebraska 68508, with a copy of such Comments mailed by first class mail, postage prepaid on the same date to Angela Melton, Legal Counsel, Nebraska Public Service Commission, 300 The Atrium, 1200 N Street, Lincoln, NE 68508.


Paul M. Schudel

EXHIBIT A

NEBRASKA PUBLIC SERVICE COMMISSION

NUSF-64 WORKSHOP – JANUARY 31, 2007

SUGGESTIONS BY THE RURAL INDEPENDENT COMPANIES AND RURAL TELECOMMUNICATIONS COALITION OF NEBRASKA

The Rural Independent Companies and the Rural Telecommunications Coalition of Nebraska recommend to the Commission and to the Staff that the following questions and subject matter areas be included in a progression order to be issued by the Commission following the January 31, 2007 workshop regarding NUSF-64. It is further suggested that such order should afford all interested parties a minimum of 45 days following its issuance to file comments in response to the questions listed below, and a minimum of 21 days thereafter to file reply comments.

This procedure would (a) afford interested parties an appropriate process to provide input to the Staff in a manner that will begin to establish a full and complete record for the Commission's consideration in this docket; (b) serve the Commission's and the Staff's requests for "feedback from interested persons" (Order Opening Docket at p. 1 and Ms. Knutson's January 26 email at next to last paragraph) on the subject matter of this docket; and (c) be consistent with the Commission's approach followed in NUSF-26 to afford interested parties a process to create a comprehensive record regarding a subject of significant importance to the future administration of the NUSF.

The following questions are proposed for submission to interested parties for comment and reply comment:

1. What policy or policies should the Commission seek to promote through the potential implementation of expense caps in this docket? (The Order Opening Docket does not identify such polic[ies].)
2. In light of the fact that the Commission has recently reaffirmed the 12% earnings limitation and mandated inclusion of the lesser of federal USF and interstate overearnings in the calculation of NUSF support, why are expense caps necessary?
3. Why should expense caps be implemented as part of the NUSF's SAM model that uses forward-looking economic costs (FLEC) which, by definition, utilize the low cost, most efficient network for provisioning service?
4. Should any expense cap proposal be subject to adjustments or a waiver process based upon company-specific expense characteristics such as especially low population density, high service costs or unusually costly projects undertaken to improve service?

5. If incenting investment in plant needed to support advanced services is a desired policy, how do expense caps support such an incentive?
6. In the event that expense caps were implemented, what rationale supports inclusion of expense categories 6110, 6120, 6210, 6220, 6230, 6310, 6410, 6510, 6530, 6540, 6610, 6620, 6710, and 6720 as identified in paragraph 1 of Ms. Knutson's January 26, 2007 email to interested parties?
7. Should any proposal to establish expense caps be based upon different terms and conditions applicable to rural and non-rural NETCs, particularly if an NETC has multi-state operations?
8. What legal considerations exist under federal or state law that limit or prohibit the Commission's implementation of expense caps?
9. How will or should implementation of expense caps be administered through the NUSF-EARN form process?
10. In the event that an expense cap proposal were to be implemented, should such proposal be restricted only to prospective application, and should a transition period be implemented?